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# SUPREME COURT OF THE UNITED STATES

**OCTOBER TERM, 1940**

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## No. 153

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HARTLEY CALDWELL,

*Petitioner,*

*vs.*

THE PEOPLE OF THE STATE OF CALIFORNIA.

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**PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE DEPARTMENT OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES AND BRIEF IN SUPPORT THEREOF.**

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*To the Honorable Charles Evans Hughes, Chief Justice of the United States, and to the Associate Justices of the Supreme Court of the United States:*

Petitioner respectfully files and submits this as his petition for a writ of certiorari to review a decision of the Appellate Department of the Superior Court of the State of California, in and for the County of Los Angeles, on the 1st day of March, 1940 (R. 11) in case No. CR A 1612, affirming a judgment of conviction of the City Court of the City of Beverly Hills, California (R. 16). Petition for

rehearing was timely filed on the 8th day of March, 1940 (R. 12) and was denied on the 18th day of March, 1940 (R. 12), on which date the judgment sought to be reviewed became final. On April 3rd, 1940, petitioner sought a Writ of Review in the District Court of Appeal, State of California, which was denied April 4th, 1940. A petition for hearing and to have the writ issued from the Supreme Court of the State of California was denied without opinion June 3rd, 1940. The Writ of Review under California practice is a discretionary writ and is limited by law to testing but one question, to-wit: the courts' jurisdiction. The judgment has been stayed by proper order until December 15, 1940.

## Statement of the Matter Involved.

The matter here involved is whether a State Penal Statute is invalid under the facts in this case, when it purports to penalize a person who acts as agent for an unlicensed insurer, when there is no provision for licensing the insurer which is not a corporation but a group of individuals operating under the Lloyd's plan; and also whether a State Penal Statute which is so vague and uncertain that a standard of conduct cannot be determined by a person of ordinary intelligence, is invalid under the facts in this case; and also whether a State Penal Statute as construed by the State court is so vague and uncertain and leads to such absurd consequences that it is invalid under the facts in this case.

## Jurisdictional Statement.

*a.* This Court has jurisdiction to review the decision of the Appellate Department of the Superior Court of the State of California, in and for the County of Los Angeles, under authority of Section 237 (b) of the Judicial Code of the United States, as amended by Act of February 13, 1925.

*b.* The State Statutes involved are various sections of the Insurance Laws of the State of California particularly set forth in the brief attached.

*c.* The Judgment sought to be reviewed became final March 18, 1940.

*d.* The Federal question presented in the State court is one of substance because therein petitioner contended he had been deprived of liberty without due process of law, and the decision of the Appellate Department of the Superior Court affirming petitioner's conviction, herein sought to be reviewed is contrary to the prevailing decisions of this Court.

Petitioner repeatedly raised this Federal question. In the Court of first instance by a Motion to Dismiss (R. 13), at the trial (R. 13), after conviction by Motion for New Trial (R. 13), in the Appellate Court by the Statement on Appeal (R. 4), and in the Points and Authorities required by Judicial Council Rules (R. 5). *Whitney* v. *California,* 274 U. S. 357.

Petitioner submits that the courts necessarily passed upon the Federal question at the stage in the proceedings and in the manner indicated as follows:

1. In denying petitioner's Motion to Dismiss (R. 16)

2. In convicting petitioner (R. 16)

3. In denying petitioner's Motion for a New Trial (R 17)

4. In affirming the conviction (R. 11)

5. In denying Petition for Rehearing (R. 12).

There was no trial on any issue of fact because petitioner and The People stipulated that the sole act complained of

was acting as agent for Lloyd's, a non-admitted insurer in effecting a policy of Marine Insurance at the request of a citizen of California upon his own property (R. 1-3), and petitioner contending that either such act was permitted by law, hence no crime was committed or that a conviction would be contrary to the 14th Amendment to the United States Constitution by denying him due process of law (R. 13).

**The Federal Questions Presented.**

1. Are the Insurance Laws of the State of California (Sections 700, 703, 1760, 1760.5 and 1761 Insurance Code, and Section 596 Political Code) as applied in this case, repugnant to the 14th Amendment to the Constitution of the United States, providing that no person shall be deprived of life, liberty or property without due process of law?

This question is necessarily divided into the following questions:

*a.* Is a criminal statute as applied in this case penalizing the non-compliance with license laws, without providing the procedure for obtaining a license, repugnant to the 14th Amendment to the Constitution of the United States?

*b.* Are the insurance laws of the State of California, as contained in Sections 700, 703, 1760, 1760.5 and 1761 of the Insurance Code, and Section 596 of the Political Code, so vague and uncertain that the penal provisions thereof, as applied to this case are repugnant to the 14th Amendment to the Constitution of the United States, providing that no person shall be deprived of life, liberty, or property without due process of law.

*c.* Are the insurance laws of the State of California, as contained in Sections 700, 703, 1760, 1760.5 and 1761, Insurance Code, and Section 596 Political Code, as construed

by the Appellate Department of the Superior Court of the State of California, in and for the County of Los Angeles, the Court of last resort, so vague and uncertain, and do they lead to such absurd consequences that as so construed and applied in this case they deny to petitioner due process of law secured to petitioner under the 14th Amendment to the Constitution of the United States?

**Reasons Relied On for Allowance of the Writ.**

1. The decision of the Superior Court affirming petitioner's conviction is in conflict with decisions of this Honorable Court in

*Connally* v. *General Construction Co.*, 269 U. S. 385;
*International Harvester Co.* v. *Kentucky*, 234 U. S. 216.

2. The Superior Court by affirming petitioner's conviction in spite of his contention that such conviction was violative of due process of law provided for by the 14th Amendment to the United States Constitution, necessarily passed upon Federal questions presented and the decision being contrary to the prevailing decisions of this Court should be reviewed and reversed.

3. Petitioner has no other remedy save by review by this Honorable Court and as the decision if permitted to stand will deprive him of his liberty without due process of law, the Writ should be allowed.

Your petitioner presents herewith as a part of this petition a brief setting forth more fully the points involved, and also a record of the proceedings below.

WHEREFORE, your petitioner prays that a Writ of Certiorari be issued directed to the Superior Court of the State of California in and for the County of Los Angeles, (Appellate Department) commanding that court to certify and

send to this Court for its review and determination, on a day certain to be named, a full and complete record of the proceedings in the case numbered and titled on its docket "No. CR A 1612 People of the State of California, Plaintiff and Respondent *v.* Hartley Caldwell, Defendant and Appellant", to the end that said case may be reviewed and determined by this Court and that the judgment of said Superior Court affirming the conviction of petitioner as to Count One of the complaint may be reversed by this Honorable Court and that your petitioner may have such other and further relief or remedy as may be just in the premises.

Respectfully submitted,

HARTLEY CALDWELL,
*Petitioner.*

By WILLIAM E. BURBY and G. W. NIX,
*Counsel.*

WILLIAM E. BURBY.
G. W. NIX.

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## BRIEF IN SUPPORT OF PETITION.

### 1. The Opinions and Decisions of the Courts Below.

The opinion of the Appellate Department of the Superior Court of the State of California in and for the County of Los Angeles was filed March 1, 1940, and appears in the Transcript of the Record at (R. 6-11). It has not been reported. The decree of the Superior Court filed and entered March 1, 1940, appears in the Transcript of the Record at (R. 11). The order denying a timely petition for rehearing without opinion was entered March 18, 1940, and appears in the Transcript of the Record at (R. 12).

### 2. Jurisdiction.

The jurisdiction of this Court is invoked under Section 237 (b) of the Judicial Code as amended by Act of February